

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:17-CR-00269-RJC-DCK

USA

v.

BENJAMIN MCMILLER

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ORDER

THIS MATTER is before the Court upon motion of the defendant to correct his sentence pursuant to Federal Rule of Criminal Procedure 35(a), (Doc. No. 35), and the government's response in opposition, (Doc. No. 39).

Rule 35(a) allows a court to correct a sentence for arithmetical, technical, or other clear error within fourteen days of sentencing. "As used in this rule, 'sentencing' means the oral pronouncement of the sentence." Fed. R. Crim. P. 35(c). The rule is jurisdictional; therefore, "[i]f the district court does not rule on the motion within the relevant time period, the motion is 'effectively denied.'" United States v. Smith, 631 F. App'x 181, 182 (4th Cir. 2016) (citing United States v. Shank, 395 F.3d 466, 468 (4th Cir. 2005)).

Here, the Court pronounced the defendant's sentence on September 10, 2018. (Doc. No. 33: Judgment at 1). The Motion to Correct was not filed until October 7, 2018. (Doc. No. 35). Accordingly, the Court does not have jurisdiction to rule on the motion.

IT IS, THEREFORE, ORDERED that the defendant's motion is **DISMISSED**.

The Clerk is directed to certify copies of this order to the defendant, counsel for the defendant, and to the United States Attorney.

Signed: October 29, 2018



Robert J. Conrad, Jr.
United States District Judge

